

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VALERIE MELROSE

Plaintiff,

v.

NEW YORK STATE DEPARTMENT
OF HEALTH OFFICE OF
PROFESSIONAL MEDICAL CONDUCT,

Defendant.

:
:
: CASE NO. 7:05-CV-08778
:
:

:
: OPINION & ORDER
: [Resolving Doc. Nos. 63, 64]
:
:

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

In this employment discrimination action, Plaintiff Valerie Melrose moves for an extension of time to file a notice of appeal from this Court's opinion and order granting summary judgment to Defendant New York State Department of Health Office of Professional Medical Conduct. [Doc. 63.] Melrose also moves to proceed *in forma pauperis*. [Doc. 64.]

On March 2, 2011, this Court entered a final judgment granting the Defendant's motion for summary judgment. [Doc. 61.] On April 26, 2011, after the thirty-day period for filing a notice of appeal had elapsed, Melrose moved for an extension of time to file a notice of appeal. [Doc. 63]; *see* 28 U.S.C. § 2107; Fed. R. App. P. 4(a)(1)(a). Melrose says that when she received this Court's opinion and order granting summary judgment from her former attorney, she was unaware that it was the Court's final decision and in any case did not know how to file a notice of appeal. In addition, Melrose says she was addressing a death in the family shortly after the Court's final

Case No. 7:05-CV-08778
Gwin, J.

judgment issued. [Doc. 63.] The Court finds that, due to the death in her family and because she now proceeds *pro se*, Melrose failed to file a timely notice of appeal due to excusable neglect and for good cause. Melrose filed her motion two weeks after the expiration of time to appeal, a short period unlikely to result in prejudice to the Defendant. 28 U.S.C. § 2107(c) (“The district court may, upon motion filed no later than 30 days after the expiration of the time otherwise set for bringing appeal, extend the time for appeal upon showing of excusable neglect or good cause.”); *see Silivanch v. Celebrity Cruises, Inc.*, 333 F.3d 355, 366 (2d Cir. 2003) (factors to consider when finding excusable neglect include danger of prejudice, length of and reason for delay, and good faith).

In addition, the Court notes that Melrose filed her application to proceed *in forma pauperis* in good faith, but finds that there are insufficient grounds to grant the application. A plaintiff may proceed *in forma pauperis* by filing a good faith affidavit stating that she is unable to pay the generally-required court costs, claiming an entitlement to redress and stating the issues on appeal. Fed. R. App. P. 24(a); *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 342 (1948). In support of her motion to proceed *in forma pauperis*, Melrose filed an application and affidavit stating that she believes there are issues of law and genuine issues of material fact that support her appeal. [Doc. 64.] In that application, however, Melrose also says she owns a 2000 Jaguar and a 1998 Ford Escort. She gives no value for the vehicles, no description of the Jaguar model or the mileage on either car, and no description of any lien on either vehicle. [*Id.*]

The Court finds Melrose’s application and affidavit to be insufficient, without more description under oath regarding the model, mileage and any lien on the Jaguar or Ford.


Accordingly, the Court **GRANTS** Melrose’s motion for an extension of time to file a notice of appeal, and grants Melrose until May 13, 2011—two weeks from the date of this order—to file

Case No. 7:05-CV-08778
Gwin, J.

notice of appeal. The Court **DENIES** Melrose's motion to proceed *in forma pauperis*.

IT IS SO ORDERED.

Dated: April 29, 2011


s/ _____
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE